



July 2, 2001

Ms. Pamela Smith  
Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-001

OR2001-2831

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148992.

The Department of Public Safety (the "department") received a request for information related to an automobile accident that occurred on June 27, 1999. You state that you will release a redacted copy of the information to the requestor. You assert that the redacted information is excepted from public disclosure under sections 552.101, 552.119 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

We first note that you state that you received the request for information on April 4, 2001. The department's request for decision was not received by this office until April 27, 2001. The department therefore failed to request a decision from this office within the ten business day period required in section 552.301 of the Government Code.

Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The applications of sections 552.101, 552.119, and 552.130 are compelling reasons.

We note that the information submitted for our review has been previously addressed in Open Records Letter Nos. 2001-2029 (2001) and 2001-2047 (2001). These rulings serve as previous determinations under §552.301(a) of the Government Code for the department with respect to sections 411.083, 552.119, and 552.130 of the Government Code. Therefore, the department may rely on those letter rulings as previous determinations regarding the submitted information. *See* Open Records Decision No. 673 (2001) (previous determination exists where requested information falls within specific clearly delineated category of information determined to be excepted, ruling is addressed to same governmental body, governmental body is explicitly informed it need not seek decision from this office to withhold information in response to future requests, and law, fact, and circumstances on which ruling was based have not changed).

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yen-Ha Le', is written above the typed name.

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/dkb/seg

Ref: ID# 148992

Encl. Submitted documents

cc: Mr. Joe Thornhill  
Thornhill & Associates  
550 Oak Grove Road  
Leander, Texas 78641-1302  
(w/o enclosures)